

HOUSE BILL No. 1164

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-2-21; IC 27-4-1-4.

Synopsis: Credit score use by property and casualty insurers. Imposes certain requirements and restrictions concerning the use of credit scores in the underwriting of property and casualty insurance. Makes a violation of the requirements an unfair and deceptive act and practice in the business of insurance.

Effective: July 1, 2002; January 2, 2004.

Crooks

January 9, 2002, read first time and referred to Committee on Insurance, Corporations and Small Business.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1164

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]:

4 **Chapter 21. Credit Scores in Property and Casualty Insurance**

5 **Sec. 1.** As used in this chapter, "commissioner" refers to the
6 commissioner of the department.

7 **Sec. 2.** As used in this chapter, "credit score" means a score
8 derived:

9 (1) from elements of information that are contained in an
10 individual's credit history; and

11 (2) by a particular method used by an insurer;
12 for use in the insurance underwriting process.

13 **Sec. 3.** As used in this chapter, "department" refers to the
14 department of insurance created under IC 27-1-1-1.

15 **Sec. 4.** As used in this chapter, "insurer" means an insurer (as
16 described in IC 27-1-2-3(x)) that issues a policy of property and
17 casualty insurance.



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1 **Sec. 5.** As used in this chapter, "property and casualty
2 insurance" means one (1) or more of the kinds of insurance
3 described in Class 2 and Class 3 of IC 27-1-5-1.

4 **Sec. 6.** This chapter applies to an individual policy of property
5 and casualty insurance.

6 **Sec. 7.** An insurer may not use a credit score until:

- 7 (1) the insurer files with the commissioner the particular
8 method that the insurer uses to develop the credit score; and
9 (2) the commissioner approves the method filed under
10 subdivision (1).

11 **Sec. 8.** An insurer:

- 12 (1) may not consider an individual's:

- 13 (A) gender;
14 (B) race;
15 (C) religion; or
16 (D) national origin; and

- 17 (2) shall consider not less than three (3) consecutive years of
18 the individual's credit history information;
19 in developing a credit score for the individual.

20 **Sec. 9.** An insurer may not, based solely on a credit score:

- 21 (1) refuse to issue;
22 (2) refuse to renew; or
23 (3) cancel;

24 a property and casualty insurance policy unless the insurer offers
25 the applicant or policyholder coverage or continuing coverage
26 under the same policy or another property and casualty insurance
27 policy that is underwritten by the insurer or an affiliate of the
28 insurer.

29 **Sec. 10.** An insurer that:

- 30 (1) refuses to issue;
31 (2) refuses to renew; or
32 (3) cancels;

33 a property and casualty insurance policy based in whole or in part
34 on a credit score shall notify the policyholder or applicant of the
35 insurer's decision according to the provisions of the federal Fair
36 Credit Reporting Act (15 U.S.C. 1681 et seq.).

37 **Sec. 11. (a)** An individual who receives notice from an insurer
38 that the insurer:

- 39 (1) refuses to issue;
40 (2) refuses to renew; or
41 (3) cancels;

42 a property and casualty insurance policy based in whole or in part

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on a credit score may request that the commissioner review the actions of the insurer to determine whether the insurer has violated this chapter in refusing to issue, refusing to renew, or canceling the property and casualty insurance policy.

(b) The commissioner may require an insurer to provide the department with information necessary to perform a review under subsection (a).

Sec. 12. Information provided by an insurer to the commissioner under this chapter is confidential.

Sec. 13. A violation of this chapter by an insurer is an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4.

Sec. 14. This chapter is not intended to conflict with any disclosure provision of state law or the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

SECTION 2. IC 27-2-21-10.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 2, 2004]: **Sec. 10.1. (a) This section applies to a policyholder or an applicant to whom notice is provided under section 10 of this chapter.**

(b) This section supplements the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(c) A policyholder or an applicant may, not more than ninety (90) days after the policyholder or applicant receives the notice required under section 10 of this chapter, request in writing from the insurer an explanation of the principal factors and additional information involved in the refusal to issue, refusal to renew, or cancellation of the policy of property and casualty insurance.

(d) An insurer shall, not more than twenty-one (21) business days after the insurer receives a request under subsection (c), provide in writing to the policyholder or applicant the requested explanation, including:

- (1) notice that a credit score was a determining factor in the insurer's decision;**
- (2) a thorough explanation of the credit scoring process used by the insurer;**
- (3) a list of all factors contained in the credit history of the policyholder or applicant that were used to derive a credit score that negatively affected the insurability of the policyholder or applicant; and**
- (4) an explanation of how the factors listed under subdivision (3) negatively affected the insurability of the policyholder or**

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applicant.

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SECTION 3. IC 27-4-1-4, AS AMENDED BY P.L.132-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

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1 (4) Entering into any agreement to commit, or individually or by
2 a concerted action committing any act of boycott, coercion, or
3 intimidation resulting or tending to result in unreasonable
4 restraint of, or a monopoly in, the business of insurance.

5 (5) Filing with any supervisory or other public official, or making,
6 publishing, disseminating, circulating, or delivering to any person,
7 or placing before the public, or causing directly or indirectly, to
8 be made, published, disseminated, circulated, delivered to any
9 person, or placed before the public, any false statement of
10 financial condition of an insurer with intent to deceive. Making
11 any false entry in any book, report, or statement of any insurer
12 with intent to deceive any agent or examiner lawfully appointed
13 to examine into its condition or into any of its affairs, or any
14 public official to which such insurer is required by law to report,
15 or which has authority by law to examine into its condition or into
16 any of its affairs, or, with like intent, willfully omitting to make a
17 true entry of any material fact pertaining to the business of such
18 insurer in any book, report, or statement of such insurer.

19 (6) Issuing or delivering or permitting agents, officers, or
20 employees to issue or deliver, agency company stock or other
21 capital stock, or benefit certificates or shares in any common law
22 corporation, or securities or any special or advisory board
23 contracts or other contracts of any kind promising returns and
24 profits as an inducement to insurance.

25 (7) Making or permitting any of the following:

26 (A) Unfair discrimination between individuals of the same
27 class and equal expectation of life in the rates or assessments
28 charged for any contract of life insurance or of life annuity or
29 in the dividends or other benefits payable thereon, or in any
30 other of the terms and conditions of such contract; however, in
31 determining the class, consideration may be given to the
32 nature of the risk, plan of insurance, the actual or expected
33 expense of conducting the business, or any other relevant
34 factor.

35 (B) Unfair discrimination between individuals of the same
36 class involving essentially the same hazards in the amount of
37 premium, policy fees, assessments, or rates charged or made
38 for any policy or contract of accident or health insurance or in
39 the benefits payable thereunder, or in any of the terms or
40 conditions of such contract, or in any other manner whatever;
41 however, in determining the class, consideration may be given
42 to the nature of the risk, the plan of insurance, the actual or

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1 expected expense of conducting the business, or any other
2 relevant factor.

3 (C) Excessive or inadequate charges for premiums, policy
4 fees, assessments, or rates, or making or permitting any unfair
5 discrimination between persons of the same class involving
6 essentially the same hazards, in the amount of premiums,
7 policy fees, assessments, or rates charged or made for:

8 (i) policies or contracts of reinsurance or joint reinsurance,
9 or abstract and title insurance;

10 (ii) policies or contracts of insurance against loss or damage
11 to aircraft, or against liability arising out of the ownership,
12 maintenance, or use of any aircraft, or of vessels or craft,
13 their cargoes, marine builders' risks, marine protection and
14 indemnity, or other risks commonly insured under marine,
15 as distinguished from inland marine, insurance; or

16 (iii) policies or contracts of any other kind or kinds of
17 insurance whatsoever.

18 However, nothing contained in clause (C) shall be construed to
19 apply to any of the kinds of insurance referred to in clauses (A)
20 and (B) nor to reinsurance in relation to such kinds of insurance.
21 Nothing in clause (A), (B), or (C) shall be construed as making or
22 permitting any excessive, inadequate, or unfairly discriminatory
23 charge or rate or any charge or rate determined by the department
24 or commissioner to meet the requirements of any other insurance
25 rate regulatory law of this state.

26 (8) Except as otherwise expressly provided by law, knowingly
27 permitting or offering to make or making any contract or policy
28 of insurance of any kind or kinds whatsoever, including but not in
29 limitation, life annuities, or agreement as to such contract or
30 policy other than as plainly expressed in such contract or policy
31 issued thereon, or paying or allowing, or giving or offering to pay,
32 allow, or give, directly or indirectly, as inducement to such
33 insurance, or annuity, any rebate of premiums payable on the
34 contract, or any special favor or advantage in the dividends,
35 savings, or other benefits thereon, or any valuable consideration
36 or inducement whatever not specified in the contract or policy; or
37 giving, or selling, or purchasing or offering to give, sell, or
38 purchase as inducement to such insurance or annuity or in
39 connection therewith, any stocks, bonds, or other securities of any
40 insurance company or other corporation, association, limited
41 liability company, or partnership, or any dividends, savings, or
42 profits accrued thereon, or anything of value whatsoever not

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specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or agent thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed agent thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, agent, or solicitor duly licensed under the laws of this state, but such broker, agent, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any

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part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of agents or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

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- 1 (i) insures against death or nonfatal injury that occurs during
- 2 the flight to which the ticket relates;
- 3 (ii) insures against personal injury or property damage that
- 4 occurs during travel to or from the airport in a common
- 5 carrier immediately before or after the flight;
- 6 (iii) insures against baggage loss during the flight to which
- 7 the ticket relates; or
- 8 (iv) insures against a flight cancellation to which the ticket
- 9 relates.
- 10 (14) Refusing, because of the for-profit status of a hospital or
- 11 medical facility, to make payments otherwise required to be made
- 12 under a contract or policy of insurance for charges incurred by an
- 13 insured in such a for-profit hospital or other for-profit medical
- 14 facility licensed by the state department of health.
- 15 (15) Refusing to insure an individual, refusing to continue to issue
- 16 insurance to an individual, limiting the amount, extent, or kind of
- 17 coverage available to an individual, or charging an individual a
- 18 different rate for the same coverage, solely because of that
- 19 individual's blindness or partial blindness, except where the
- 20 refusal, limitation, or rate differential is based on sound actuarial
- 21 principles or is related to actual or reasonably anticipated
- 22 experience.
- 23 (16) Committing or performing, with such frequency as to
- 24 indicate a general practice, unfair claim settlement practices (as
- 25 defined in section 4.5 of this chapter).
- 26 (17) Between policy renewal dates, unilaterally canceling an
- 27 individual's coverage under an individual or group health
- 28 insurance policy solely because of the individual's medical or
- 29 physical condition.
- 30 (18) Using a policy form or rider that would permit a cancellation
- 31 of coverage as described in subdivision (17).
- 32 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
- 33 vehicle insurance rates.
- 34 (20) Violating IC 27-8-21-2 concerning advertisements referring
- 35 to interest rate guarantees.
- 36 (21) Violating IC 27-8-24.3 concerning insurance and health plan
- 37 coverage for victims of abuse.
- 38 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 39 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
- 40 insurance producers.
- 41 **(24) Violating IC 27-2-21 concerning underwriting of**
- 42 **property and casualty insurance.**

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